

Hearing Date: November 15, 2013 at 10:00 a.m. (Prevailing Eastern Time)
Objection Deadline: November 8, 2013 at 4:00 p.m. (Prevailing Eastern Time)

MORRISON & FOERSTER LLP
1290 Avenue of the Americas
New York, New York 10104
Telephone: (212) 468-8000
Facsimile: (212) 468-7900
Gary S. Lee
Norman S. Rosenbaum
Erica J. Richards

*Counsel to the Debtors and
Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
In re: : Chapter 11
:
Residential Capital, LLC, et al., : Case No. 12-12020 (MG)
:
Debtors. : Jointly Administered
:
----- X

**DEBTORS' MOTION, PURSUANT TO BANKRUPTCY CODE SECTION 107(b) AND
BANKRUPTCY RULE 9018, TO FILE UNDER SEAL REDACTED PORTIONS OF
(I) THE MOTION FOR AN ORDER PURSUANT TO BANKRUPTCY CODE SECTION
105(a) AND BANKRUPTCY RULE 9019 APPROVING SETTLEMENT AGREEMENT
BETWEEN DEBTOR GMAC MORTGAGE, LLC AND GVC MORTGAGE, INC.,
AND (II) THE SETTLEMENT AGREEMENT**

Residential Capital, LLC, and its affiliated Debtors in the above captioned case
(the "Debtors"), submit this motion (the "Motion") pursuant to section 107(b) of Title 11 of the
United States Code, 11 U.S.C. §§ 101, et seq. ("Bankruptcy Code") and Rule 9018 of the Federal
Rules of Bankruptcy Procedure ("Bankruptcy Rules") for leave to file under seal, pending further
order of this Court, redacted portions of (i) the *Debtors' Motion For An Order Pursuant To
Bankruptcy Code Section 105(a) and Bankruptcy Rule 9019 Approving Settlement Agreement
Between Debtor GMAC Mortgage, LLC and GVC Mortgage, Inc.* (the "9019 Motion"),¹ and

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the 9019 Motion.

(ii) the Settlement Agreement (defined below). In support of this Motion, the Debtors rely upon and incorporate by reference the Declaration of Charles Laubach (the “Laubach Decl.”), attached hereto as Exhibit 2. In further support of the Motion, the Debtors, by and through their undersigned counsel, respectfully represent as follows:

PRELIMINARY STATEMENT

1. By this Motion, the Debtors seek authority to keep confidential key economic terms of a Settlement Agreement with GVC pursuant to Bankruptcy Code section 107(b) and Bankruptcy Rule 9018. Because those provisions represent an exception to the general presumption of public access in bankruptcy proceedings, such relief may be granted on under “compelling or extraordinary circumstances.” *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994) (citing *City of Hartford v. Chase*, 942 F.2d 130, 135-36 (2d Cir. 1991)). Further, where such relief is warranted, redacting the document to remove only confidential information—rather than wholesale sealing of documents containing some confidential information—is the preferred form of protection. *See, e.g., In re Borders Grp., Inc.*, 462 B.R. 42, 48 (Bankr. S.D.N.Y. 2011).

2. The Settlement Agreement at issue resolves Repurchase Demands asserted by GMACM against GVC. Those types of demands are frequently asserted and settled in the ordinary course in the correspondent lending industry. Such settlements are more akin to commercial negotiations than settlements of publicly filed civil suits, and are typically kept strictly confidential. The disclosure of the repurchase recovery rates set forth in the Settlement Agreement could be detrimental to the Debtors’ efforts to liquidate similar claims against other counterparties for the benefit of their estates and, ultimately their creditors. GVC’s future ability to negotiate repurchase terms in the ordinary course of their business could also be hampered if

the economic terms of the Settlement Agreement were made publically available. The Debtors submit that the economic terms of the Settlement Agreement constitute confidential commercial information entitled to protection under Bankruptcy Code section 107(b) and Bankruptcy Rule 9018.

3. Additionally, the Debtors have narrowly tailored the requested relief to comply with the Court's prior guidance regarding sealing motions by seeking to file only partially redacted copies of the 9019 Motion and Settlement Agreement, and by providing for full disclosure of the redacted terms to interested third parties to the extent such parties enter into confidentiality agreements. Accordingly, the relief requested herein is both necessary and appropriate in scope, and should be granted.

JURISDICTION

4. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The basis for the relief sought herein is section 107 of the Bankruptcy Code and Bankruptcy Rule 9018.

BACKGROUND

A. The Chapter 11 Cases

5. On May 14, 2012 (the "Petition Date"), each of the Debtors filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors are managing and operating their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. These cases are being jointly administered pursuant to Bankruptcy Rule 1015(b). No trustee has been appointed in these chapter 11 cases.

6. On May 16, 2012, the United States Trustee for the Southern District of New York appointed a nine member official committee of unsecured creditors (“Creditors’ Committee”).

7. On June 20, 2012, the Court directed that an examiner be appointed (the “Examiner”), and on July 3, 2012, the Court approved Arthur J. Gonzalez as the Examiner [Docket Nos. 454, 674]. On May 13, 2013, the Examiner filed his report under seal [Docket Nos. 3677, 3697]. On June 26, 2013, the report was unsealed and made available to the public [Docket No. 4099].

8. On July 3, 2013, the Debtors filed the *Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors* [Docket No. 4153] and the *Disclosure Statement for the Joint Chapter 11 Plan of Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors* [Docket No. 4157] (the “Disclosure Statement”). On August 23, 2013, the Court entered an order approving, *inter alia*, the Disclosure Statement, as amended [Docket No. 4809].

B. The 9019 Motion

9. Contemporaneous with the filing of the Motion, the Debtors are filing the 9019 Motion requesting that the Court approve the settlement agreement (the “Settlement Agreement”), dated May 14, 2013, entered into by and between GMAC Mortgage, LLC (“GMACM”) and GVC Mortgage, Inc. (“GVC” and together with GMACM, the “Parties”). The Settlement Agreement seeks to settle and release certain repurchase demands relating to Repurchase Obligations made by GMACM arising under a Correspondent Agreement for Purchase and Sale of Residential Mortgage Loans, dated April 3, 2006, by and among the Parties and Ally Bank.

RELIEF REQUESTED

10. The Debtors request entry of an order substantially in the form attached hereto as Exhibit 1, pursuant to Section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018: (i) granting leave to file partially redacted copies of (a) the 9019 Motion, and (b) the Settlement Agreement (collectively, the “Sealed Documents”);² (ii) ordering that unredacted copies of the Sealed Documents be made available only to (a) the Court, (b) counsel to the Creditors’ Committee, (c) the United States Trustee, and (d) other parties in interest that enter into confidentiality agreements reasonably acceptable to the Parties; and (iii) ordering that parties receiving the Sealed Documents shall treat them as confidential and not available for public dissemination so long as the Sealed Documents, or any portions thereof, remain under seal by Order of this Court.

BASIS FOR RELIEF REQUESTED

11. Section 105(a) of the Bankruptcy Code codifies the bankruptcy court’s inherent equitable powers and authorizes it to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

12. In addition, Bankruptcy Code section 107(b) authorizes courts to issue orders that will protect entities from the potential harm that may result from the disclosure of certain commercially sensitive or confidential information:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may—

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information

11 U.S.C. § 107(b).

² Unredacted copies of the Sealed Documents identifying the portions of which the Debtors are seeking to keep sealed are being provided to the Court for *in camera* review.

13. Bankruptcy Rule 9018 further defines the procedures by which a party may move for relief under Bankruptcy Code section 107(b):

On motion or its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information

Fed. R. Bankr. P. 9018. The purpose of Bankruptcy Rule 9018 “is to protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury.” *In re Global Crossing Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003).

14. Based upon these provisions, bankruptcy courts restrict access to filed documents where parties demonstrate good cause. *See, e.g., In re Global Crossing Ltd.*, 295 B.R. at 725; *In re Epic Assocs. V*, 54 B.R. 445, 450 (Bankr. E.D. Va. 1985). The moving party bears the burden of showing that the information is confidential. *See, e.g., In re Food Mgmt Grp.*, 359 B.R. at 561. Whether a document falls within the scope of section 107(b) is ultimately a decision for the Bankruptcy Court. *In re Barney’s, Inc.*, 201 B.R. 703, 707 (Bankr. S.D.N.Y. 1996). Once the Bankruptcy Court determines that a party-in-interest is seeking protection of information that falls within one of the categories enumerated in section 107(b) of the Bankruptcy Code, “the court is *required* to protect a requesting interested party and has no discretion to deny the application.” *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994) (emphasis in original) (affirming bankruptcy court’s order to seal licensing agreement because release of any information pertaining to agreement’s overall structure or terms and conditions would adversely affect movant’s ability to negotiate favorable promotional agreements).

15. As set forth below, the Debtors believe that cause exists to file under seal partially redacted copies of the 9019 Motion and Settlement Agreement because such documents

contain commercially sensitive information, the disclosure of which would be potentially harmful to the Parties.

16. Within the correspondent lending industry, repurchase demands between counterparties to mortgage loan purchase agreements are frequently asserted and settled in the ordinary course. Laubach Decl. ¶ 4. Thus, such settlements are more akin to commercial negotiations than settlements of publicly filed civil suits, and are typically kept strictly confidential. *Id.*

17. The disclosure of the relevant terms of the Settlement Agreement could be detrimental to the Debtors' efforts to liquidate similar claims against other counterparties for the benefit of their estates and, ultimately their creditors. Laubach Decl. ¶ 5. Specifically, disclosure of the economic terms of the Settlement could cause commercial injury to GVC, and could make other counterparties against whom the Debtors have asserted repurchase demands unwilling to enter into settlement discussions. *Id.*

18. GVC is engaged, among other things, in the business of originating, processing, underwriting, closing and selling residential mortgage loans. Laubach Decl. ¶ 6. In the ordinary course of that business, GVC regularly negotiates settlement of repurchase demands with counterparties similar to the ones that are proposed to be settled pursuant to the Settlement Agreement. *Id.* The terms of such settlements are typically kept confidential under provisions similar to the confidentiality provision contained in the Settlement Agreement. *Id.* Disclosure of the terms of the Settlement Agreement with the Debtors could jeopardize GVC's ability to competitively negotiate repurchase terms with other counterparties in the future. *Id.*

19. Public disclosure of the terms of the Settlement Agreement could also jeopardize the willingness of other counterparties to enter into similar settlements with the

Debtors going forward. Laubach Decl. ¶ 7. Because settlement is likely to be the most efficient and effective mechanism for liquidating many of the Debtors' other outstanding repurchase demands, the inhibition of those settlement discussions could have a significant negative impact on the Debtors' ability to liquidate those claims, which would, in turn, damage the Debtors' ability to maximize the value of the estates to the detriment of the Debtors' creditors. *Id.*

20. The Debtors believe that the unredacted portions of the 9019 Motion, accompanying declaration, and Settlement Agreement will provide interested parties with adequate information regarding the subject of and basis for the Settlement Agreement. The claims being settled under the Settlement Agreement are highly technical in nature, and full disclosure of the exact economic terms is likely to be informative only to competitors of GVC and parties against whom the Debtors are currently asserting similar repurchase demands. Further, prior to filing the 9019 Motion, the Debtors reviewed the Settlement Agreement with the advisors to the Creditors' Committee. In light of this representation of creditor interests by sophisticated advisors, the Debtors submit that the need for full public disclosure is substantially reduced. Nonetheless, to the extent parties in interest would like to review the redacted information (excluding parties the Debtors or GVC have reason to believe are seeking access in order to obtain an unfair commercial advantage), the Debtors propose to grant them access subject to their entering into a confidentiality agreement reasonably acceptable to the Debtors and GVC.

21. The commercial concerns set forth above constitute good cause to file portions of the 9019 Motion and the Settlement Agreement with the Bankruptcy Court under seal, and the Debtors respectfully request leave to do so.

NOTICE

22. The Debtors have provided notice of this Motion in accordance with the Case Management Procedures Order, approved by this Court on May 23, 2012 [Docket No. 141].

NO PRIOR REQUEST

23. No previous Motion for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Debtors request that this Court enter an order, a form of which is attached hereto as Exhibit 1, pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, granting the relief requested herein, and for such other and further relief as may be just and proper.

Dated: October 24, 2013
New York, New York

MORRISON & FOERSTER LLP

By: /s/ Norman S. Rosenbaum

Gary S. Lee

Norman S. Rosenbaum

Erica J. Richards

MORRISON & FOERSTER LLP

1290 Avenue of the Americas

New York, New York 10104

Telephone: (212) 468-8000

Facsimile: (212) 468-7900

*Counsel to the Debtors and
Debtors in Possession*